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REMARKS

Reconsideration of the present application is respectfully requested.

Applicant filed a Request for Continued Examination on March 29, 2005, including a request for a two month suspension of action. This Amendment and Response is the submission to be considered in this period of continued examination.

Applicant has amended claim 28 to improve its clarity and eliminate a misspelling. Further, Applicant offers new claims 35-38 which depend on claim 28, and a new independent claim 39 along with dependent claims 40 and 41. No new matter is added by any of these claims.

The rejections under 35 U.S.C. §103.

Claim 28 was rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 3,418,690 to Edwards in view of U.S. Patent No. 4,495,135 to White. Applicant disagrees with this rejection because the proposed modification renders the prior art unsatisfactory for its intended purpose by preventing the apparatus of Edwards from forming a smooth curvilinear bead upon the peripheral edge of a molded article without a parting line.

The proposed modification renders the prior art unsatisfactory for its intended purpose. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. MPEP §2143.01 citing In re Gordon 221 USPQ 1125 (CAFC 1984).

The Office Action proposes incorporating the separable first and second mold portions as

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taught by White into the mold of Edwards in order to facilitate removal of the container. However, this substitution of White into Edwards would prevent Edwards from forming a smooth curvilinear bead without a parting line, which is fundamental to the disclosure of Edwards (col. 1, lines 57-60 of Edwards).

In order to form the smooth bead without a parting line, Edwards combines a specific mold shape with a precisely-timed shearing operation. With regards to shape, the sidewalls of Edwards have a slightly concave appearance (col. 3, lines 23-25; FIGS. 3A, 3B, 3C, and 3D of Edwards). The radius of the concave wall is discussed in detail (col. 4, line 47-54). As a result of this specific shape, the thermoplastic material buckles in a predetermined manner (col. 5, lines 13-23; FIG. 3B) at the moment when the shearing operation begins. In particular, "the most important part . . . needing the curved surface is that portion immediately adjacent to [the] shearing surface" (col. 5, lines 50-52; FIG. 3B).

After establishing this specific mold shape, Edwards then teaches that the shearing members "must move quickly between the sealing position and shearing position so that the plastic material does not have sufficient time to chill" (col. 5, lines 68-70). As a result of this pre-buckled configuration of the plastic and quick movement of die 18, "the sharp sheared edge portions of the plastic are caused to embed themselves in the still heated plastic . . . without any parting lines or the like" (col. 5, line 74- col. 6, line 4). In this manner of self-adherence, Edwards forms his smooth curvilinear bead (col. 3, lines 55-59).

This careful creation of the smooth bead without a parting line will not be possible with the combination proposed in the Office Action. The Office Action proposes using White's first mold portion, which has the wrong shape. Referring to FIGS. 5 and 8 of White, the molding

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surface of leading edge 39 is straight and angled downward. Further, leading end 39 appears to come to a sharp point. Since White's leading edge 39 is not curved as taught by Edwards, any downward motion of the plastic material during shearing will not result in buckling. Instead of buckling, the upper portion of a container made with the proposed combination will instead simply fold over. The upper sheared edge of the formed container will not bend back on itself and self adhere to the sidewall, as shown in FIG. 3B of Edwards. White's geometry prevents the type of compressive loading necessary to create Edwards' buckling.

Since the sheared edge of a container made with the proposed combination will not fold back and self adhere onto the sidewall, a sharp parting line will be remain where the material was sheared. Edwards notes the problems in obtaining a smooth rim structure on a container (column 1, lines 35-39). Edwards notes that having a mold parting line on the peripheral edge of a container is a "disability" and is "particularly undesirable in containers ... used for ordinary drinking purposes" (column 1, lines 44-50). He states that his invention is "directed toward solving the problem of providing a smooth curvilinear bead upon the peripheral edge of a molded article, the bead being provided without a parting line" (column 1, lines 57-60, emphasis added).

Thus, the proposed combination of incorporating the separable first and second portions of White's mold into the mold of Edwards would create on the finished container the undesirable rough parting line noted by Edwards. This proposed combination would render Edwards unsatisfactory for its intended purpose of providing a bead on a container without a parting line.

Since the proposed addition of White's first and second mold portions into the mold of Edwards would render Edwards unsatisfactory for its intended purposes, there can be no

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suggestion or motivation to make this modification. Lacking the suggestion or motivation to make the modification, a prima facie case of obviousness cannot be established and Applicant respectfully request withdrawal of the rejection of claim 28.

New Claims.

Applicant offers new claims 35-41 which are dependent upon claim 28. Claim 35 includes that the thermoformed container is removed from between the first and second portions of the mold. Neither White nor Edwards disclose such removal. Claim 36 includes that cutting of the thermoplastic material is before separating the first and second portions of the mold, which is neither shown by White nor the combination of Edwards and White. Claim 37 includes that the separating of the first and second portions of the mold is by lowering the second portion from the first portion, which is not shown in White or Edwards. Claim 38 includes that cutting of the thermoplastic material occurs after allowing the drawn thermoplastic material to cool. Neither White nor Edwards disclose this. Specifically, Edwards discloses cutting the plastic material while it is still hot, as discussed above.

Claim 39 is a new independent claim that includes a combination of elements not found in either Edwards, White, or their combination. As one example, claim 39 includes cutting the cooled thermoplastic material. In contrast, Edwards discloses cutting the plastic material while it is still hot, and White does not appear to disclose cutting the material at all. New dependent claim 40 includes removing the container from below the first portion of the mold. Neither White, Edwards, nor their combination show such removal.

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CLOSING

Applicant has amended claim 28 and added new claims 35-41. Applicant respectfully requests reconsideration of pending claims 28-41.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede any basis for rejections or objections in the Office Action. Further, with regards to the various statements made in the Office Action concerning any prior art, the teachings of any prior art are to be interpreted under the law. Applicant makes no admissions as to any prior art. The remarks herein are provided simply to overcome the rejections and objections made in the Office Action in an expedient fashion.

The undersigned welcomes a telephonic interview with the Examiner if the Examiner believes that such an interview would facilitate resolution of any outstanding issues.

Respectfully Submitted,

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